

**REMARKS****1. Present Status of Patent Application**

This is a full and timely response to the outstanding non-final Office Action mailed June 16, 2005. Reconsideration and allowance of the application and presently pending claims are respectfully requested.

**2. Response To Rejections of Claims 1-5, 7-15, and 17-20 Under 35 U.S.C. § 103(a)**

In the Office Action, claims 1-5, 7-15, and 17-20 stand rejected under 35 U.S.C. § 103(a) as purportedly being unpatentable over *Lawrence* (U.S. Patent No. 6,628,935) in view of *Thorne*. It is well-established at law that, for a proper rejection of a claim under 35 U.S.C. § 103 as being obvious based upon a combination of references, the cited combination of references must disclose, teach, or suggest, either implicitly or explicitly, all elements/features/steps of the claim at issue. See, e.g., *In Re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988), and *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981).

**a. Claim 1**

As provided in independent claim 1, Applicant claims:

An apparatus for sending a message to a wireless device over a wireless network, the apparatus comprising:

a gateway for receiving the message transmitted over an external network in communication with the gateway, *the message including a deletion instruction to delete the message if the message is not delivered to the wireless device*, for attempting to deliver the message to the wireless device over the wireless network, and for carrying out the deletion instruction by deleting the message.

(Emphasis added).

Applicant respectfully submits that independent claim 1 is allowable for at least the reason that *Lawrence* in view of *Thorne* does not disclose, teach, or suggest at least the features of a "message including a deletion instruction to delete the message if the message is not delivered to the wireless device" and "a gateway . . . for carrying out the deletion instruction by deleting the message," as recited in claim 1.

The Office Action states that *Lawrence* "does not explicitly indicate the message including a deletion instruction to delete the message if the message [is] not delivered to the wireless device, for attempting to deliver the message to the wireless device over the wireless network, and for carrying out the deletion instruction by deleting the message." Page 3. With regard to *Thorne*, Applicant respectfully submits that *Thorne* is legally inadequate to cure the deficiencies of the *Lawrence* reference.

For example, *Thorne* appears to disclose at most a server deleting a copy of a message, if the message is forwarded to another device which is more akin to the action of deleting a message for successful delivery than non-delivery. Also, *Thorne* discloses the deletion of messages based on expirations of time but not in response to non-delivery. See col. 9, lines 22-44 and col. 6, lines 50-66. Therefore, *Thorne* is legally inadequate to cure the deficiencies of the *Lawrence*, since *Thorne* fails to suggest or teach at least "the message including a deletion instruction to delete the message if the message is not delivered to the wireless device," as recited in claim 1. Therefore, a *prima facie* case establishing an obviousness rejection by the proposed combination of *Lawrence* with *Thorne* art has not been made. Therefore, the rejection of claim 1 should be withdrawn.

b. Claims 2-5 and 7-10.

Because independent claim 1 is allowable over the cited art of record, its dependent claims 2-5 and 7-10 are allowable as a matter of law, for at least the reason that the dependent claims 2-5, and 7-10 contain all the features and elements of their respective independent claim 1. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Additionally and notwithstanding the foregoing allowability of claims 2-5, and 7-10, these dependent claims recite further features and/or combinations of features (as is apparent by examination of the claim itself) that are patentably distinct from the cited art of record. Hence, there are other reasons why these dependent claims are allowable.

c. Claim 11

As provided in independent claim 11, Applicant claims:

An apparatus for sending a message to a wireless device over a wireless network, the apparatus comprising:

a gateway for receiving the message transmitted over an external network in communication with the gateway, *the message including a deletion instruction to delete the message if the message is not delivered to the wireless device*, for determining whether the wireless device is capable of receiving the message, and *for carrying out the deletion instruction by deleting the message if the wireless device is not capable of receiving the message*.

(Emphasis added).

Applicant respectfully submits that independent claim 11 is allowable for at least the reason that *Lawrence* in view of *Thorne* does not disclose, teach, or suggest at least the features of a "message including a deletion instruction to delete the message if the message is not delivered to the wireless device" and "a gateway . . . for carrying out the deletion instruction by deleting the message if the wireless device is not capable of receiving the message," as recited in claim 11.

The Office Action states that *Lawrence* "does not explicitly indicate the message including a deletion instruction to delete the message if the message [is] not delivered to the wireless device, for attempting to deliver the message to the wireless device over the wireless network, and for carrying out the deletion instruction by deleting the message." Page 3. With regard to *Thorne*, Applicant respectfully submits that *Thorne* is legally inadequate to cure the deficiencies of the *Lawrence* reference.

For example, *Thorne* appears to disclose at most a server deleting a copy of a message, if the message is forwarded to another device which is more akin to the action of deleting a message for successful delivery than non-delivery. Also, *Thorne* discloses the deletion of messages based on expirations of time but not in response to non-delivery. See col. 9, lines 22-44 and col. 6, lines 50-66. Therefore, *Thorne* is legally inadequate to cure the deficiencies of the *Lawrence*, since *Thorne* fails to suggest or teach at least "the message including a deletion instruction to delete the message if the message is not delivered to the wireless device" and "for carrying out the deletion instruction by deleting the message if the wireless device is not capable of receiving the message," as recited in claim 11. Therefore, a *prima facie* case establishing an obviousness rejection by the proposed combination of *Lawrence* with *Thorne* art has not been made. Therefore, the rejection of claim 11 should be withdrawn.

d. Claim 12

As provided in independent claim 12, Applicant claims:

An apparatus for sending a message to a wireless device over a wireless network, the apparatus comprising:

a gateway for receiving the message transmitted over an external network in communication with the gateway, *the message including a deletion instruction to delete the message if the message is not delivered to the wireless device*, for attempting to deliver the message to the wireless device over the wireless network, and *for carrying out the deletion instruction by deleting the message and returning the message over the external network.*

(Emphasis added).

Applicant respectfully submits that independent claim 12 is allowable for at least the reason that *Lawrence* in view of *Thorne* does not disclose, teach, or suggest at least the features of a "message including a deletion instruction to delete the message if the message is not delivered to the wireless device" and "a gateway . . . for carrying out the deletion instruction by deleting the message and returning the message over the external network," as recited in claim 12.

The Office Action acknowledges deficiencies of the *Lawrence* reference, as previously mentioned. Accordingly, Applicant respectfully submits that *Thorne* is legally inadequate to cure the deficiencies of the *Lawrence* reference. For example, *Thorne* appears to disclose at most a server deleting a copy of a message, if the message is forwarded to another device which is more akin to the action of deleting a message for successful delivery than non-delivery. Also, *Thorne* discloses the deletion of messages based on expirations of time but not in response to non-delivery. See col. 9, lines 22-44 and col. 6, lines 50-66. Therefore, *Thorne* is legally inadequate to cure the deficiencies of the *Lawrence*, since *Thorne* fails to suggest or teach at least a "message including a deletion instruction to delete the message if the message is not delivered to the wireless device" and "a gateway . . . for carrying out the deletion instruction by deleting the message and returning the message over the external network," as recited in claim 12. Therefore, a *prima facie* case establishing an obviousness rejection by the proposed combination of *Lawrence* with *Thorne* art has not been made. Therefore, the rejection of claim 12 should be withdrawn.

e. Claim 13

As provided in independent claim 13, Applicant claims:

A method of sending a message to a user of a wireless device over a wireless network, the method comprising:

*receiving the message including a deletion instruction to delete the message if the message is not delivered to the wireless device;*

attempting to deliver the message to the wireless device over the wireless network; and

deleting the message.

(Emphasis added).

Applicant respectfully submits that independent claim 13 is allowable for at least the reason that *Lawrence* in view of *Thorne* does not disclose, teach, or suggest at least the features of "receiving the message including a deletion instruction to delete the message if the message is not delivered to the wireless device," as recited in claim 13.

The Office Action acknowledges deficiencies of the *Lawrence* reference, as previously mentioned. Accordingly, Applicant respectfully submits that *Thorne* is legally inadequate to cure the deficiencies of the *Lawrence* reference. For example, *Thorne* appears to disclose at most a server deleting a copy of a message, if the message is forwarded to another device which is more akin to the action of deleting a message for successful delivery than non-delivery. Also, *Thorne* discloses the deletion of messages based on expirations of time but not in response to non-delivery. See col. 9, lines 22-44 and col. 6, lines 50-66. Therefore, *Thorne* is legally inadequate to cure the deficiencies of the *Lawrence*, since *Thorne* fails to suggest or teach at least "receiving the message including a deletion instruction to delete the message if the message is not delivered to the wireless device," as recited in claim 13. Therefore, a *prima facie* case establishing an obviousness rejection by the proposed combination of *Lawrence* with *Thorne* art has not been made. Therefore, the rejection of claim 13 should be withdrawn.

f. Claims 13-15 and 17-18

Because independent claim 12 is allowable over the cited art of record, its dependent claims 13-15 and 17-18 are allowable as a matter of law, for at least the reason that the dependent claims 13-15 and 17-18 contain all the features and steps of their respective independent claim 12. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Additionally and notwithstanding the foregoing allowability

of claims 13-15 and 17-18, these dependent claims recite further features and/or combinations of features (as is apparent by examination of the claim itself) that are patentably distinct from the cited art of record. Hence, there are other reasons why these dependent claims are allowable.

g. Claims 19-20

As provided in independent claim 19, Applicant claims:

A method of sending a message to a user of a wireless device over a wireless network, the method comprising:

*receiving the message including a deletion instruction to delete the message if the message is not delivered to the wireless device, wherein the deletion instruction is provided by a sender of the message;*

*determining whether the wireless device is capable of receiving the message immediately; and*

*deleting the message if the wireless device is not capable of receiving the message immediately.*

(Emphasis added).

Applicant respectfully submits that independent claim 19 is allowable for at least the reason that *Lawrence* in view of *Thorne* does not disclose, teach, or suggest at least the features of "receiving the message including a deletion instruction to delete the message if the message is not delivered to the wireless device, wherein the deletion instruction is provided by a sender of the message; determining whether the wireless device is capable of receiving the message immediately; and deleting the message if the wireless device is not capable of receiving the message immediately," as recited in claim 19.

The Office Action acknowledges deficiencies of the *Lawrence* reference, as previously mentioned. Accordingly, Applicant respectfully submits that *Thorne* is legally inadequate to cure the deficiencies of the *Lawrence* reference. For example, *Thorne* appears to disclose at most a server deleting a copy of a message, if the message is forwarded to another device which is more akin to the action of deleting a message for successful delivery than non-delivery. Also, *Thorne* discloses the deletion of messages based on expirations of time but not in response to non-delivery. See col. 9, lines 22-44 and col. 6, lines 50-66. Therefore, *Thorne* is legally inadequate to cure the deficiencies of the *Lawrence*, since *Thorne* fails to suggest or teach at least "receiving the message including a deletion instruction to delete the message if the message is not delivered to the wireless device, wherein the deletion instruction is provided by a sender of the message;

determining whether the wireless device is capable of receiving the message immediately, and deleting the message if the wireless device is not capable of receiving the message immediately," as recited in claim 19. Therefore, a *prima facie* case establishing an obviousness rejection by the proposed combination of *Lawrence* with *Thorne* art has not been made. Therefore, the rejections of claim 19 and claim 20 (which depends from claim 19) should be withdrawn.

3. Response To Rejections of Claim 6 and 16 Under 35 U.S.C. § 103(a)

In the Office Action, claims 6 and 16 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over *Lawrence* in view of *Hung* (U.S. Patent No. 6,772,143). For a proper rejection of a claim under 35 U.S.C. § 103, the teachings of the cited art references must suggest all features of the claimed subject matter to one of ordinary skill in the art. See, e.g., *In re Dow Chemical*, 837 F.2d 469, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988); *In re Keller*, 642 F.2d 413, 208 U.S.P.Q. 871, 881 (C.C.P.A. 1981).

Because independent claims 1 and 13 are allowable over the cited art of record, their respective dependent claims 6 and 16 are allowable as a matter of law, for at least the reason that dependent claims 6 and 16 contain all the features of their respective independent claims 1 and 13 and *Hung* is legally inadequate to cure the deficiencies of the *Lawrence* reference. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Additionally and notwithstanding the foregoing allowability of claims 6 and 16, these dependent claims recite further features and/or combinations of features (as is apparent by examination of the claim itself) that are patentably distinct from the cited art of record. Hence, there are other reasons why these dependent claims are allowable.

**CONCLUSION**

Any other statements in the Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. Furthermore, any and all findings of well-known art and official notice, or statements interpreted similarly, should not be considered well known since the Office Action does not include specific factual findings predicated on sound technical and scientific reasoning to support such conclusions.

In light of the foregoing amendments and for at least the reasons set forth above, Applicant respectfully submits that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims 1-20 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. In addition, Applicant reserves the right to address any comments made in the Office Action that were not specifically addressed herein. Thus, such comments should not be deemed admitted by the Applicant. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned agent at (770) 933-9500.

Respectfully submitted,

  
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